

**ESB 6155 - H AMD 1280**

By Representative Kelley

ADOPTED 03/01/2012

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 18.28.010 and 1999 c 151 s 101 are each amended to  
4 read as follows:

5 Unless a different meaning is plainly required by the context, the  
6 following words and phrases as hereinafter used in this chapter shall  
7 have the following meanings:

8 (1) "Debt adjusting" means the managing, counseling, settling,  
9 adjusting, prorating, or liquidating of the indebtedness of a debtor,  
10 or receiving funds for the purpose of distributing said funds among  
11 creditors in payment or partial payment of obligations of a debtor.

12 (2) "Debt adjuster", which includes any person known as a debt  
13 pooler, debt manager, debt consolidator, debt prorater, or credit  
14 counselor, is any person engaging in or holding himself or herself out  
15 as engaging in the business of debt adjusting for compensation. The  
16 term shall not include:

17 (a) Attorneys-at-law, escrow agents, accountants, broker-dealers  
18 in securities, or investment advisors in securities, while performing  
19 services solely incidental to the practice of their professions;

20 (b) Any person, partnership, association, or corporation doing  
21 business under and as permitted by any law of this state or of the  
22 United States relating to banks, consumer finance businesses, consumer  
23 loan companies, trust companies, mutual savings banks, savings and  
24 loan associations, building and loan associations, credit unions, crop  
25 credit associations, development credit corporations, industrial  
26 development corporations, title insurance companies, ((~~or~~)) insurance  
27 companies, or third-party account administrators;

1 (c) Persons who, as employees on a regular salary or wage of an  
2 employer not engaged in the business of debt adjusting, perform credit  
3 services for their employer;

4 (d) Public officers while acting in their official capacities and  
5 persons acting under court order;

6 (e) Any person while performing services incidental to the  
7 dissolution, winding up or liquidation of a partnership, corporation,  
8 or other business enterprise;

9 (f) Nonprofit organizations dealing exclusively with debts owing  
10 from commercial enterprises to business creditors;

11 (g) Nonprofit organizations engaged in debt adjusting and which do  
12 not assess against the debtor a service charge in excess of fifteen  
13 dollars per month.

14 (3) "Debt adjusting agency" is any partnership, corporation, or  
15 association engaging in or holding itself out as engaging in the  
16 business of debt adjusting.

17 (4) "Financial institution" means any person doing business under  
18 the laws of any state or the United States relating to commercial  
19 banks, bank holding companies, savings banks, savings and loan  
20 associations, trust companies, or credit unions.

21 (5) "Third-party account administrator" means an independent  
22 entity that holds or administers a dedicated bank account for fees and  
23 payments to creditors, debt collectors, debt adjusters, or debt  
24 adjusting agencies in connection with the renegotiation, settlement,  
25 reduction, or other alteration of the terms of payment or other terms  
26 of a debt.

27  
28 **Sec. 2.** RCW 18.28.080 and 1999 c 151 s 102 are each amended to  
29 read as follows:

30 (1) By contract a debt adjuster may charge a reasonable fee for  
31 debt adjusting services. The total fee for debt adjusting services,  
32 including, but not limited to, any fee charged by a financial  
33 institution or a third-party account administrator, may not exceed  
34 fifteen percent of the total debt listed by the debtor on the

1 contract. The fee retained by the debt adjuster from any one payment  
2 made by or on behalf of the debtor may not exceed fifteen percent of  
3 the payment. The debt adjuster may make an initial charge of up to  
4 twenty-five dollars which shall be considered part of the total fee.  
5 If an initial charge is made, no additional fee may be retained which  
6 will bring the total fee retained to date to more than fifteen percent  
7 of the total payments made to date. No fee whatsoever shall be  
8 applied against rent and utility payments for housing.

9 In the event of cancellation or default on performance of the  
10 contract by the debtor prior to its successful completion, the debt  
11 adjuster may collect in addition to fees previously received, six  
12 percent of that portion of the remaining indebtedness listed on said  
13 contract which was due when the contract was entered into, but not to  
14 exceed twenty-five dollars.

15 (2) A debt adjuster shall not be entitled to retain any fee until  
16 notifying all creditors listed by the debtor that the debtor has  
17 engaged the debt adjuster in a program of debt adjusting.

18 (3) The department of financial institutions has authority to  
19 enforce compliance with this section.

20  
21 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.230  
22 RCW to read as follows:

23 (1) A third-party account administrator must be licensed as a  
24 money transmitter under this chapter and comply with the following  
25 additional requirements:

26 (a) A debtor's funds must be held in an account at an insured  
27 financial institution;

28 (b) A debtor owns the funds held in the account and must be paid  
29 accrued interest on the account, if any;

30 (c) A third-party account administrator may not be owned or  
31 controlled by, or in any way affiliated with, a debt adjuster;

32 (d) A third-party account administrator may not give or accept any  
33 money or other compensation in exchange for referrals of business  
34 involving a debt adjuster;

1 (e) A debtor may withdraw from the service provided by a third-  
2 party account administrator at any time without penalty and must  
3 receive all funds in the account, other than funds earned by a debt  
4 adjuster in compliance with chapter 18.28 RCW, within seven business  
5 days of the debtor's request; and

6 (f) A contract between a third-party account administrator and a  
7 debtor must disclose in precise terms the rate and amount of all  
8 charges and fees. In addition, the contract must include a statement  
9 that is substantially similar to the following: "Under the Washington  
10 Debt Adjusting Act, the total fees you are charged for debt adjusting  
11 services may not exceed fifteen percent of the total amount of debt  
12 you listed on your contract with the debt adjuster. This includes  
13 fees charged by a debt adjuster, a third-party account administrator,  
14 and a financial institution." The disclosures required by this  
15 subsection (1)(f) must be on the front page of the contract and must  
16 be in at least twelve-point type.

17 (2) The legislature finds and declares that any violation of this  
18 section substantially affects the public interest and is an unfair and  
19 deceptive act or practice and unfair method of competition in the  
20 conduct of trade or commerce as set forth in RCW 19.86.020. In  
21 addition to all remedies available in chapter 19.86 RCW, a person  
22 injured by a violation of this section may bring a civil action to  
23 recover the actual damages proximately caused by a violation of this  
24 section, or one thousand dollars, whichever is greater.

25 (3) For purposes of this section and section 4 of this act:

26 (a) "Debt adjuster" has the same meaning as defined in RCW  
27 18.28.010;

28 (b) "Third-party account administrator" means an independent  
29 entity that holds or administers a dedicated bank account for fees and  
30 payments to creditors, debt collectors, debt adjusters, or debt  
31 adjusting agencies in connection with the renegotiation, settlement,  
32 reduction, or other alteration of the terms of payment or other terms  
33 of a debt. "Third-party account administrator" does not include an  
34

1 entity that is otherwise exempt from this chapter under RCW  
2 19.230.020.

3  
4 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.230  
5 RCW to read as follows:

6 (1) A third-party account administrator shall maintain the  
7 following records for at least five years:

8 (a) All contracts the third-party account administrator has  
9 entered into with debtors and debt adjusters;

10 (b) Account statements identifying and itemizing deposits,  
11 transfers, disbursements, and fees; and

12 (c) Any other records required in rule by the director.

13 (2) All records maintained by the third-party account  
14 administrator are open to inspection by the director or the director's  
15 designee.

16  
17 NEW SECTION. **Sec. 5.** (1) Any person or entity that provides debt  
18 adjusting services, as defined in RCW 18.28.010, in this state shall  
19 provide the following information to the department of financial  
20 institutions by September 1, 2012:

21 (a) The percentage of Washington debtors for whom the debt  
22 adjuster provides or provided debt adjusting services in the previous  
23 three years who cancelled, terminated, or otherwise stopped using the  
24 debt adjuster's services without settlement of all of the debtor's  
25 debts;

26 (b) The total fees collected from Washington debtors during the  
27 previous three years; and

28 (c) For each debtor for whom the debt adjuster provides debt  
29 adjusting services:

30 (i) The number of debts included in the contract between the debt  
31 adjuster and the debtor;

32 (ii) The principal amount of each debt at the time the contract  
33 was signed;

34 (iii) Whether each debt is active, terminated, or settled;

1 (iv) If a debt has been settled, the settlement amount of the debt  
2 and the savings amount; and

3 (v) The total fees charged to the debtor and how the fees were  
4 calculated.

5 (2) The department of financial institutions shall submit a report  
6 to the appropriate committees of the legislature summarizing the  
7 information received under subsection (1) of this section by December  
8 1, 2012.

9  
10 NEW SECTION. **Sec. 6.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected."

14

15 Correct the title.

EFFECT: Grants the Department of Financial Institutions (DFI)  
authority to enforce the statutory restrictions on the fees that may  
be charged for debt adjusting services.

Requires a contract between a third-party account administrator and  
a debtor to provide a statement regarding the 15 percent cap on fees  
under the Debt Adjusting Act.

Requires third-party account administrators to maintain certain  
records for a period of five years. Provides that the records are  
open to inspection by the DFI.

Requires any person or entity providing debt adjusting services in  
the state to provide the DFI with specified information by September  
1, 2012. Requires the DFI to submit a report summarizing that  
information to the Legislature by December 1, 2012.

Modifies the definition of "third-party account administrator" to  
mean an independent entity that holds or administers an account for  
fees to debt adjusters and debt adjusting agencies, in addition to  
payments to creditors and debt collectors. Clarifies that entities  
exempt from the Uniform Money Services Act are not included in the  
definition of "third-party account administrator."

--- END ---